IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

**WRIT PETITION NO. 2664 OF 1993.**

The Head Master,
The Progressive Education Society's
Urdu High School, ... Petitioner
293/194, South Sadar Bazar, (orig. Deft.-
Solapur. tenent)

V/s.

Smt. Anwarbi Sikandar Shaikh,
Occupation- Household,
R/o 293/294, South Sadar Bazar,
(Guardian and Manager of the person ...Respondent
and property of Sikandar Rahman (orig. Plff.
Shaikh) landlady)

Mr. G.R. Agarwal with Mr. R.M. Agarwal for the petitioner.

None for the respondent.

**CORAM : ANOOP V.MOHTA J.**

**DATE : 29TH JUNE, 2005.**

**ORAL JUDGMENT**

. Heard the learned Counsel Mr. G.R. Agarwal for the petitioner. By the present petition, the original tenant has challenged the order dated 5/1/1993, whereby the respondent-original plaintiff's an application for the amendment was allowed. The matter arising out of the proceeding between the parties under Bombay Rents

Hotel and Lodging House Rates (Control) Act, 1971 ( For short Bombay Rent Act)

2. The learned Counsel appearing for the petitioner basically contended that, having observed by the Court that that by the proposed amendment, the parties adding the ground under section 13(1)(l) of the Bombay Rent Act about acquisition of "suitable accommodation" by the tenant, but the same was not available in view of the decision of Division Bench Judgment, reported in **AIR 1994 Bombay 175 ( (Bhavarlal Sukhlal Soni V. Lakshminarayan Deo Public Trust Swaminarayan Mandir)**. The said provision is available only for the residential purpose and not for the non-residential occupation. The present case is concerned with the non-residential occupation. In view of this, said amendment application ought not to have been allowed.

3. Considering the scope of the Article 227 of the Constitution of Indian, I am not inclined to interfere with the order passed by the learned Judge, allowing the amendment application in spit of the above objection. There is no such reference made of section 13(1)(l) of the Bombay Rent Act in the amendment application filed

by the respondent. The contents of the same even though related and are revolving around section 13(1) sub-clause (l) of the Bombay Rent Act, still I am not of the view, that at this stage, there is no need to conclude the issue or contention as raised in the said amendment application by the landlord-respondent including of the acquisition of the "suitable accommodation". During the trial parties will get the full opportunity to contend and raise appropriate submissions or objections. The law related to the grant of amendment under Order 6 Rule 17 C.P.C.,now liberated to the extent that the parties in their defence can raise all the pleas of law, as well as, of facts, even if such amendment application is allowed. Therefore, I see, there is no reason to interfere with the order of grant of amendment application. The petitioner is at liberty to raise all pleas of law as well as of facts, during the trial.

4. For the above reasons, the present writ petition is dismissed. Rule discharged. The interim stay as granted is also vacated. However, no order as to cost.

**[ANOOP V. MOHTA, J.]**